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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
09/470,026	12/22/1999	YUE-TEH JANG	241/120	5678
28075	7590	10/06/2004		
CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420				
			EXAMINER SIRMONS, KEVIN C	
			ART UNIT 3763	PAPER NUMBER

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/470,026

Applicant(s)

JANG ET AL.

Examiner

Kevin C. Sirmons

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21, 43-46 and 50-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21, 43-46 and 50-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21 and 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nash et al. U.S. Pat. No. 6,080,170 in view of Muni U.S. Pat. No. 6,135,991.

Nash discloses a method for treatment of a vascular lesion, comprising the steps of introducing a guide wire into a vessel, the guidewire having an expandable occlusive member disposed on a distal end thereof (figs. 16 and 17; cols. 26-29); advancing the guidewire to a region of interest and positioning the occlusive member distally of the region of interest (figs. 16 and 17; cols. 26-29); advancing a catheter with an expandable stent over the guidewire and positioning the stent within the region of interest (figs. 16 and 17; cols. 26-29); expanding the occlusive member (figs. 16 and 17); expanding the stent within the region of interest (figs. 16 and 17); and aspirating fluid and embolic debris from the region of interest (figs. 16 and 17; cols. 26-29) wherein the step of aspirating fluid and embolic debris comprises the steps of infusing fluid into the region of interest through an infusion lumen and one or more infusion ports disposed on the aspiration catheter and suctioning the fluid and embolic debris from the region of interest through one or more suction lumens in fluid communication with a vacuum (figs. 16 and 17; cols. 26-29); as to claim 50-54, (figs. 16 and 17).

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Nash does not clearly disclose advancing an aspirating catheter over the guidewire and positioning the aspiration catheter proximal the region of interest. Muni discloses advancing an aspirating catheter over the guidewire and position the aspiration catheter proximal the region of interest (col. 4 and 5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to vary and/or change the method steps of Nash to advance the aspirating catheter over the guidewire and position the aspiration catheter proximal the region of as taught by Muni to eliminate the occlusion and prevent particles from leaving the working area during surgery (col. 4 and 5).

It is the examiner's position that it would have been obvious to one of ordinary skill in the art to use the aspiration port for aspiration and irrigation.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-46 are rejected under 35 U.S.C. 103(a) as being obvious over Nash et al in view of Imran U.S. Pat. No. 5,833,650.

Nash discloses the method of for treatment of vascular lesion substantially as claimed except for wherein the expandable stent is a self-expandable stent, shape memory material, thermally adapted to expand at or near body temperature and comprises Nitinol.

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Imran discloses a self-expandable stent, a stent made from shape memory material such as Nitinol and a stent that is thermally adapted to expand at or near body temperature. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the stent of Nash to have the above features of Imran in order to ensure that restenosis will not take place (col. 8).

### ***Response to Arguments***

Applicant's arguments with respect to claim 7/21/04 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kevin C. Sirmons whose telephone number is (703) 306-5410. The examiner can normally be reached on Monday - Thursday from 6:30 am to 4:00 pm. The examiner can also be reached on alternate Fridays.

Kevin C. Sirmons  
Patent Examiner  
10/4/04